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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,410	02/07/2002	Udo Bickers	514413-3911	1061

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NEW YORK, NY 10151

EXAMINER	
PRYOR, ALTON NATHANIEL	
ART UNIT	PAPER NUMBER
1616	

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05/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/049,410	BICKERS ET AL.	
	Examiner	Art Unit	
	ALTON N. PRYOR	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *,15,17,19,20,22,24,27 and 29-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *,15,17,19,20,22,24,27 and 29-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/19/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Previous rejections not recited in this office action have been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 14,15,17-20,22,24,27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanan et al (US 5231070; 7/27/93).

Narayanan teaches a method of applying a composition comprising dicamba, bentazon, bialaphos, diruron, linuron, atriazine, or diquat (post emergent herbicides) plus a methacrylate type polymer. Narayanan teaches that the composition is applied to the soil in a pre-emergent application. See abstract, column 2 line 64 – column 4 line 47. Claim 18 is added because Narayanan teaches a method of applying a composition comprising glyphosate or bialaphos plus a methacrylate polymer pre-emergently to soil. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Narayanan teaches that a mixture of crop treating chemicals can be employed. See column 15 lines 16-30. The person of ordinary skill in the art would immediately envision that the prior art methodology would be employed to treat any plant, which are non-genetically modified as well as plants, which are genetically modified. Narayanan does not exemplify the

method comprising the instant composition comprising dicamba, bentazon, bialaphos, diruron, linuron, atriazine, glyphosate or diquat (post emergent herbicides) plus a methacrylate type polymer. However it would have been obvious to one having ordinary skill in the art to develop instant method comprising said composition since the Narayanan suggests the combination of ingredients. Applicant argues that Narayanan does not teach "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "a method of inhibiting the leaching of an active plant growth regulating agrichemical". The Examiner argues that Narayanan makes obvious the instant invention. Firstly, Narayanan teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 lines 64-66. The Examiner also argues that post-emergent herbicides such as glyphosate, and bilanafos can be added to the composition. See column 4 lines 20-32. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to Narayanan teaching "a method of inhibiting the leaching of an active plant growth regulating agrichemical," the Examiner points out that the inhibition of leaching means the prevention of the agrichemical from moving from the site of application. The Examiner argues that this teaching does not change the composition suggested by Narayanan or the active step of application of the composition suggested by Narayanan. The instant composition comprising a post-emergent herbicide plus acrylic polymer is suggested by Narayanan. Narayanan also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil.

See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Narayanan teaches the use of a pre-emergent herbicide (column 2 lines 23-31) being applied both pre-emergently and post-emergently (column 3 lines 11-18). The Examiner argues that since both Narayanan's invention and instant invention teaches the same active step of applying a suggested composition comprising a post-emergent herbicide plus an acrylic polymer pre-emergently. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. The Applicant further argues that Narayanan requires a crosslinked or non-crosslinked N-alkenyl lactam homopolymer. Note instant claims employ "comprising" language which allows for the inclusion of a crosslinked or non-crosslinked N-alkenyl lactam homopolymer.

Applicant argues that Narayanan does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner's burden to show that an effective amount of post-emergent herbicide is the same as the amount of post-emergence herbicide used to inhibit leaching as in Narayanan. Examiner argues that Narayanan teaches a composition comprising 10% post-emergent herbicide and 10% polymer. See column 7 lines 60-68. Note that instant specification discloses that the amount of post-emergent herbicide in the composition can range from 0.001 to 48%. See instant specification page 3 lines 26-31. Since the 10% post-emergent herbicide taught by Narayanan falls within the 0.001 to 48% post-emergent herbicide range disclosed by instant specification, it can be concluded that effective amount of post-emergent herbicide used in the instant invention is the same as

the effective amount of post-emergent herbicide used to inhibit leaching as in Narayanan. Note that Narayanan's effective amount of post-emergent herbicide anticipates instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Narayanan, one of ordinary skill in the art would have been motivated to use post-emergent herbicides to treat harmful plants post-emergently. Examiner argues that Narayanan makes obvious the application of agrichemicals pre-emergently. Narayanan also teaches that the agrichemical include herbicides such as glyphosate and bilanafos which are post-emergent herbicides. See column 2 line 64 – column 3 line 23, column 4 lines 20-46. See also instant specification page 3 line 35.

With respect to the Declaration unexpected data is presented for post-emergent herbicide (paraquat, glyphosate) being used pre-emergently. However, the claims are much broader than the scope of results presented in the examples. Also, examples in Declaration do not specify carriers as recited in claims.

The results provided in the specification on pages 15-18 are not convincing. Important data is missing for most of the Examples such as data showing the effect of glufosinate without the carrier and data representing the carrier alone.

Claims 14,15,17,19,20,22,24,27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders (US 5635447; 6/3/97).

Sanders suggests a method of applying a composition comprising glyphosate (post emergent herbicides) plus a polyacrylic acid polymer. Sanders teaches that the composition is applied to the soil (a pre-emergent application). See abstract, column 2 line 36 – column 3 line 18.

Applicant argues that Sanders does not teach "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "enhancing the absorption/penetration of an herbicide into a plant cell/tissue". The Examiner argues that Sanders does make obvious the instant invention. Firstly, Sanders teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 line 36 – column 3 line 18. The Examiner also argues that to the composition is added post-emergent herbicides such as glyphosate, and atrazine. See column 1 lines 10-41, column 2 lines 19-31. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to Sanders' teaching "enhancing the absorption/penetration of an herbicide into a plant cell/tissue," the Examiner points out that the enhancing absorption/penetration is to the prevention of the agrichemical from moving from the site of application. The Examiner argues that this teaching does not change the composition suggested by Sanders or the active step of application of the composition suggested by Sanders. The instant composition comprising a post-emergent herbicide plus polyacrylic acid is suggested by Sanders. Sanders does not exemplify the method comprising the instant composition comprising glyphosate (post emergent herbicides) plus a polyacrylic acid

polymer. However it would have been obvious to one having ordinary skill in the art to develop instant method comprising said composition since the Sanders suggests the combination of ingredients. Sanders also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil. See column 2 line 36 – column 3 line 18. The Examiner that since both Sanders' invention and instant invention teaches the same active step of applying a composition comprising a post-emergent herbicide plus polyacrylic acid pre-emergently, Sanders makes the instant invention obvious. See column 2 line 36 – column 3 line 18.

Applicant argues that Sanders does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner's burden to show that an effective amount of post-emergent herbicide used in Sanders reads on the amount of said herbicide used in instant invention. The Examiner argues that Sanders' effective amount of post-emergent herbicide makes obvious instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Sanders, one of ordinary skill in the art would be motivated to use post-emergent herbicides to treat harmful plants post-emergently. The Examiner argues that Sanders make obvious the application of agrichemicals pre-emergently. Sanders also teaches that the agrichemical include herbicides such as glyphosate and atrazine, which are post-emergent herbicides. See column 1 lines 10-41, column 2 line 19 – column 3 line 18.

With respect to the Declaration unexpected data is presented for post-emergent herbicide (paraquat, glyphosate) being used pre-emergently. However, the claims are much broader than the scope of results presented in the examples. Also, examples in Declaration do not specify carriers as recited in claims.

The results provided in the specification on pages 15-18 are not convincing. Important data is missing for most of the Examples such as data showing the effect of glufosinate without the carrier and data representing the carrier alone.

Claims 14,15,17-20,22,24,27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanan et al (US 5231070; 7/27/93) in combination with Sprankle et al (Adsorption, Mobility, and Microbial Degradation of Glyphosate in the Soil, Wee Science, vol. 23, issue 3, pp. 229-234).

Narayanan teaches a method of applying a composition comprising dicamba, bentazon, bialaphos, diruron, linuron, atriazine, or diquat (post emergent herbicides) plus a methacrylate type polymer. Narayanan teaches that the composition is applied to the soil in a pre-emergent application. See abstract, column 2 line 64 – column 4 line 47. Claim 18 is added because Narayanan teaches a method of applying a composition comprising glyphosate or bialaphos plus a methacrylate polymer pre-emergently to soil. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Narayanan teaches that a mixture of crop treating chemicals can be employed. See column 15 lines 16-30. The person of ordinary skill in the art would immediately envision that the prior art methodology would be employed to treat any plant, which are non-genetically modified

as well as plants, which are genetically modified. Narayanan does not exemplify the method comprising the instant composition comprising dicamba, bentazon, bialaphos, diruron, linuron, atriazine, glyphosate or diquat (post emergent herbicides) plus a methacrylate type polymer. Narayanan does not teach the invention comprising the fuller's earth carrier. However it would have been obvious to one having ordinary skill in the art to develop instant method comprising said composition since the Narayanan suggests the combination of ingredients. With respect to fuller's earth, Sprankle teaches the combination of glyphosate with a clay carrier such as bentonite (fuller's earth) . Sprankle teaches that combination functions as a herbicide. It would have been obvious to one having ordinary skill in the art to modify the invention of Narayanan by the replacement of the acrylic polymer by fuller's earth. One would have been motivated to do this to determine if other carriers such as clays (fuller's earth) would have been effective when applied pre-emergently. Applicant argues that Narayanan does not teach "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "a method of inhibiting the leaching of an active plant growth regulating agrichemical". The Examiner argues that Narayanan makes obvious the instant invention. Firstly, Narayanan teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 lines 64-66. The Examiner also argues that post-emergent herbicides such as glyphosate, and bilanafos can be added to the composition. See column 4 lines 20-32. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to

Narayanan teaching “a method of inhibiting the leaching of an active plant growth regulating agrichemical,” the Examiner points out that the inhibition of leaching means the prevention of the agrichemical from moving from the site of application. The Examiner argues that this teaching does not change the composition suggested by Narayanan or the active step of application of the composition suggested by Narayanan. The instant composition comprising a post-emergent herbicide plus acrylic polymer is suggested by Narayanan. Narayanan also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Narayanan teaches the use of a pre-emergent herbicide (column 2 lines 23-31) being applied both pre-emergently and post-emergently (column 3 lines 11-18). The Examiner argues that since both Narayanan’s invention and instant invention teaches the same active step of applying a suggested composition comprising a post-emergent herbicide plus an acrylic polymer pre-emergently. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. The Applicant further argues that Narayanan requires a crosslinked or non-crosslinked N-alkenyl lactam homopolymer. Note instant claims employ “comprising" language which allows for the inclusion of a crosslinked or non-crosslinked N-alkenyl lactam homopolymer.

Applicant argues that Narayanan does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner’s burden to show that an effective amount of post-emergent herbicide is the

same as the amount of post-emergence herbicide used to inhibit leaching as in Narayanan. Examiner argues that Narayanan teaches a composition comprising 10% post-emergent herbicide and 10% polymer. See column 7 lines 60-68. Note that instant specification discloses that the amount of post-emergent herbicide in the composition can range from 0.001 to 48%. See instant specification page 3 lines 26-31. Since the 10% post-emergent herbicide taught by Narayanan falls within the 0.001 to 48% post-emergent herbicide range disclosed by instant specification, it can be concluded that effective amount of post-emergent herbicide used in the instant invention is the same as the effective amount of post-emergent herbicide used to inhibit leaching as in Narayanan. Note that Narayanan's effective amount of post-emergent herbicide anticipates instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Narayanan, one of ordinary skill in the art would have been motivated to use post-emergent herbicides to treat harmful plants post-emergently. Examiner argues that Narayanan makes obvious the application of agrichemicals pre-emergently. Narayanan also teaches that the agrichemical include herbicides such as glyphosate and bilanafos which are post-emergent herbicides. See column 2 line 64 – column 3 line 23, column 4 lines 20-46. See also instant specification page 3 line 35.

With respect to the Declaration unexpected data is presented for post-emergent herbicide (paraquat, glyphosate) being used pre-emergently. However, the claims are

much broader than the scope of results presented in the examples. Also, examples in Declaration do not specify carriers as recited in claims.

The results provided in the specification on pages 15-18 are not convincing. Important data is missing for most of the Examples such as data showing the effect of glufosinate without the carrier and data representing the carrier alone.

Claims 14,15,17,19,20,22,24,27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders (US 5635447; 6/3/97) in combination with Sprankle et al (Adsorption, Mobility, and Microbial Degradation of Glyphosate in the Soil, Weed Science, vol. 23, issue 3, pp. 229-234).

Sanders suggests a method of applying a composition comprising glyphosate (post emergent herbicides) plus a polyacrylic acid polymer. Sanders teaches that the composition is applied to the soil (a pre-emergent application). See abstract, column 2 line 36 – column 3 line 18.

Sanders does not exemplify the method comprising the instant composition comprising glyphosate (post emergent herbicides) plus a polyacrylic acid polymer. However it would have been obvious to one having ordinary skill in the art to develop instant method comprising said composition since the Sanders suggests the combination of ingredients.

Sanders does not teach the invention comprising the fuller's earth carrier. However it would have been obvious to one having ordinary skill in the art to develop instant method comprising said composition since Sanders suggests the combination of

ingredients. With respect to fuller's earth, Sprankle teaches the combination of glyphosate with a clay carrier such as bentonite (fuller's earth) . Sprankle teaches that combination functions as a herbicide. It would have been obvious to one having ordinary skill in the art to modify the invention of Sanders by the replacement of the acrylic polymer by fuller's earth. One would have been motivated to do this to determine if other carriers such as clays (fuller's earth) would have been effective when applied pre-emergently.

Applicant argues that Sanders does not teach "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "enhancing the absorption/penetration of an herbicide into a plant cell/tissue". The Examiner argues that Sanders does make obvious the instant invention. Firstly, Sanders teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 line 36 – column 3 line 18. The Examiner also argues that to the composition is added post-emergent herbicides such as glyphosate, and atrazine. See column 1 lines 10-41, column 2 lines 19-31. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to Sanders' teaching "enhancing the absorption/penetration of an herbicide into a plant cell/tissue," the Examiner points out that the enhancing absorption/penetration is to the prevention of the agrichemical from moving from the site of application. The Examiner argues that this teaching does not change the composition suggested by Sanders or the active step of application of the composition suggested by Sanders. The

instant composition comprising a post-emergent herbicide plus polyacrylic acid is suggested by Sanders. Sanders also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil. See column 2 line 36 – column 3 line 18. The Examiner that since both Sanders' invention and instant invention teaches the same active step of applying a composition comprising a post-emergent herbicide plus polyacrylic acid pre-emergently, Sanders makes the instant invention obvious. See column 2 line 36 – column 3 line 18.

Applicant argues that Sanders does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner's burden to show that an effective amount of post-emergent herbicide used in Sanders reads on the amount of said herbicide used in instant invention. The Examiner argues that Sanders' effective amount of post-emergent herbicide makes obvious instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Sanders, one of ordinary skill in the art would be motivated to use post-emergent herbicides to treat harmful plants post-emergently. The Examiner argues that Sanders make obvious the application of agrichemicals pre-emergently. Sanders also teaches that the agrichemical include herbicides such as glyphosate and atrazine, which are post-emergent herbicides. See column 1 lines 10-41, column 2 line 19 – column 3 line 18.

With respect to the Declaration unexpected data is presented for post-emergent herbicide (paraquat, glyphosate) being used pre-emergently. However, the claims are much broader than the scope of results presented in the examples. Also, examples in Declaration do not specify carriers as recited in claims.

The results provided in the specification on pages 15-18 are not convincing. Important data is missing for most of the Examples such as data showing the effect of glufosinate without the carrier and data representing the carrier alone.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21,23,25,26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovejoy (DE 2947073; 6/4/80) and The Agrochemicals Handbook, 3rd Edition A0810/ Aug 91 or A0310/ Aug 91 as applied to claims rejected using Narayanan or Sanders above and on record. Narayanan or Sanders teach all the limitations of claim 23 and 28 except for the invention comprising silicon dioxide. See 103(a) rejections above using Narayanan alone or Sanders alone. Lovejoy teaches a herbicidal invention comprising silicon dioxide for the purpose of preventing the caking of a herbicidal formulation. One would have been expected to modify the invention of Narayanan or Sanders to include the silicon dioxide taught by Lovejoy. One would have motivated to do this in order to make a stable herbicide formulation that has reduced

caking. With respect to the instant invention not comprising glufosinate and / or paraquat, it would have been obvious to one having ordinary skill in the art to further modify the invention of Lovejoy –Narayanan or –Sanders to include glufosinate and / or paraquat. One would have been motivated to this since all actives are herbicides. It is obvious to combine actives having the same utility with the expectation that the final combination would have the same utility.

The Applicant argues that why not include other agrochemicals. The Examiner argues that other herbicides could be added to the composition since all herbicides function in weed control. In addition it would have been obvious to add silicon dioxide to the instant herbicidal composition taught in Narayanan or Sanders. One would be motivated to do this since silicone dioxide stabilizes the herbicide. See comments in 103(a) rejections above regarding the data provided in the specification and declaration.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 14,15,17-22,24-27,29,30-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,2,8,21 and 25 of U.S. Patent No. 6770594. Although the conflicting claims are not identical, they are not patentably distinct from each other because USPN makes claim to a composition comprising agrochemical active substance. In the specification at column 7 lines 5-24 it is recited that the active can be glufosinate and/or glyphosate. In the specification at column 10 line 63- column 11 line 16 it is recited that the active can be bialaphos. Glufosinate, glyphosate and bialaphos are post-emergent herbicides. USPN at column 16 lines 24-59 discloses that the herbicide can be placed onto adsorptive materials such as clays and polyacrylates. USPN claims that post-emergent herbicides can be applied pre-emergently. Although USPN claims make instant invention obvious the USPN claims are of different scope than instant claims. For example, USPN requires a silicone surfactant, whereas instant claims do not require the silicone surfactant.

Claims 14,15,17-22,24-27,29,30-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,3 and 4 of U.S. Patent No. 6693063. Although the conflicting claims are not identical, they are not patentably distinct from each other because USPN makes claim to a composition comprising agrochemical active substance. In the specification at column 18 lines 51-67 it is recited that the active can be glufosinate and/or glyphosate. In the specification at column 25 lines 14-44 it is recited that the active can be bialaphos. Glufosinate, glyphosate and bialaphos are post-emergent herbicides. USPN at column 25 lines 39-

41 discloses that the herbicide can be placed onto adsorptive materials such as clays and polyacrylates. USPN claims that post-emergent herbicides can be applied pre-emergently. Although USPN claims make instant invention obvious the USPN claims are of different scope than instant claims. For example, USPN requires at least a 12 alkylene oxide unit containing surfactant, whereas instant claims do not require the said surfactant.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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